S.B. Civil Contempt Petition No.95/2006

Smt. Alka Mathur vs. Mr. N.K. Sharma.

Date : 15.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. SP Sharma a/w Mr.MP Parik, for the petitioner.
Mr. Sangeet Lodha, for the respondent.

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Heard learned counsel for the parties.

The present contempt petition has been filed by the petitioner with the allegations that the respondent has not complied with the directions issued by this Court in S.B. Civil Writ Petition No.2593/2003 which was decided on 25.8.2005. According to learned counsel for the petitioner, this Court directed the respondent to regularise the services of the petitioner after taking into consideration the earlier litigation. The operative part of the order is as under :-

> "Therefore, the writ petition of the petitioner is allowed. The respondents are directed to consider the case of the petitioner for regularisation on the post of Junior Engineer and in case the age of the petitioner, as on the present time, comes in the way, then the age relaxation may be ordered. No order as to costs."

Learned counsel for the petitioner vehemently submitted

that despite clear order to regularise the service of the petitioner on the post of Junior Engineer, the respondent has issued the order dated 7.12.2005 (Annex.C/3) giving her fresh appointment. The order dated 7.12.2005 provides that the petitioner will be on probation. It is also provided that the services of the petitioner are liable to be terminated during the probation period without any notice. Number of conditions are attached in the order dated 7.12.2005. According to learned counsel for the petitioner, this Court's direction was to regularise the services of the petitioner and the petitioner was in service since last more than 13 years. The services were terminated and she approached the Labour Court who allowed her claim and thereafter, the matter came up before this Court and, therefore, the petitioner is in continuous service. All these facts were there in the knowledge of the contemners. It is also submitted that in identical facts and circumstances, other person's services have been regularised and he has been given benefit of past service. In this case, the petitioner has not been given benefit and the contemners have disobeyed the orders of this Court. According to learned counsel for the petitioner, not only this, but even after the representation submitted by the petitioner to the contemners dated 12.12.2005, the petitioner has not been given benefit of the order. The petitioner also served a notice through her advocate upon the contemners. When the petitioner failed in getting relief from the contemners, then she filed the present contempt petition.

According to learned counsel for the petitioner, in identical facts and circumstances or rather say in a case where independent committee gave opinion which was not found in consonance with the direction of the Court, the Hon'ble Apex Court rejected the defence of the contemner having foundation that they relied upon the opinion of the committee. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court delivered in the case of T.N. Godavarman Thirumulpad (102) through Amicus Curiae vs. Ashok Khot & Anr. reported in 2006(5) SCC 1 wherein after rejection of the said stand of the contemners, the contemners were punished.

Learned counsel for the contemner submitted that the decision was taken by the Board of Directors and thereafter the order dated 7.12.2005 was passed. It is also submitted that the matter was again examined by the Board and the matter was referred to the learned Advocate General and learned Additional Advocate General who both independently opined that since there is no direction of the Court of giving benefit of past services and since this Court in its order observed that by regularisation of the petitioner's services, there will be no extra burden upon the employer, therefore, the order dated 7.12.2005 (Annex.C-3) complies the Court's direction fully. It is also submitted by learned counsel for the contemner that the contemner has no ill-motive nor he wanted to harass the petitioner. The contemner relied upon the opinion of the legal experts and not a committed appointed for the purpose.

Learned counsel for the contemner also submitted that the Hon'ble Supreme Court in its latest decision delivered in the case of K. Madalaimuthu and another vs. State of T.N. and others. reported in 2006(6) SCC 558, held that the seniority of the persons appointed temporarily to a particular post without recourse to the recruitment rules can be counted only from the date on which his services are regularised and the seniority of promotees herein determined considering the date of their initial temporary appointment as starting point of their seniority was not proper. Learned counsel for the contemner also relied upon the judgment delivered in the case of State of Karnataka vs. Uma Devi reported in (2006)4 SCC 1.

I considered the submissions of learned counsel for the parties and perused the record also.

At the outset, it may be observed that the contempt petition is not akin or substitution of execution petition or a writ petition. In contempt proceedings, the contemner may be punished and even then, the aggrieved party may not get the relief so far as he or she is concerned. The contemner can be punished in case it is found that the contemner has willfully disobeyed the Court's direction. For that, there is any defence of the contemner that he has reasonable reason to believe what order conveyed, the Court may find out whether such interpretation projected by the contemner is only to nullify the Court's direction and to find way out for not implementing the orders. There may be

some bonafide reasons for interpretation and for that purpose and that also can be found from the facts of each case whether the contemner in fact bonafidely acted on the information received by them or it was a pretext only.

In this case, the Court's order quoted above reveals that the respondents were directed to consider the case of the petitioner for regularisation on the post of Junior Engineer and it was further directed that in case, the age of the petitioner comes in the way, then relaxation may be given. So far as direction of this Court is concerned, that is clear that the services of the petitioner should be regularised. It appears that the petitioner has been given fresh appointment by order dated 7.12.2005. This decision was taken by the Board of Directors and not by any individual person. The petitioner submitted representation as well as notice through Advocate. The contemner examined the matter afresh. There is opinion of the Hon'ble Minister in the matter that the petitioner should have been given all the benefits of service which she rendered before the date of her regularisation/appointment vide order dated 7.12.2005. Learned Advocate General opined that the order dated 7.12.2005 is full compliance of the order of this Court dated 25.8.2005. Same was the opinion given by the learned Additional Advocate General independently and separately.

In view of the above and in view of the decision given by the Hon'ble Supreme Court in the case of Madalaimuthu

(supra), it cannot be said that the contemner has projected the defence only to avoid implementation of the order of this Court. It cannot be said that the respondent/ contemner has no reasonable reason to believe the opinions of learned Advocate General and learned Additional Advocate General. So far as opinion is concerned, that opinion even of any Advocate, may not be binding upon even the person who sought opinion but acceptance of that opinion cannot be faulted simply because there may be difference in the opinion. In view of the above, so far as the allegation of willful disobedience by the contemner is concerned, that is not proved.

In case, the petitioner thinks that she was entitled to more benefits, then certainly she has remedy to challenge the order dated 7.12.2005.

In view of the above discussion, no case of willful disobedience is made out and the judgment relied upon by learned counsel for the petitioner cannot be applied to the facts of the case where the opinions of learned Advocate General and learned Additional Advocate General are relied upon.

Consequently, this contempt petition is dismissed. Notices are discharged.

(PRAKASH TATIA), J.

S.Phophaliya